

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

Steve Sviggum, Commissioner,
Department of Labor and Industry,
State of Minnesota,

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

v.

Stratford Construction, LLC

This matter came before Administrative Law Judge Eric L. Lipman on the Commissioner's Notice of Motion and Motion for a Default Judgment.

Jackson Evans, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance on behalf of Stratford Construction, LLC (Respondent). Following the lapse of the 10 working day period for Stratford Construction, LLC to make a responsive filing, the hearing record closed.

STATEMENT OF THE ISSUES

1. Are the proposed penalties contested by Respondent appropriate under the circumstances?
2. Are the dates set for abatement of the violations appropriate under the circumstances?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 3, 2008, the Commissioner's Notice of Motion and Motion for a Default Judgment in this matter was mailed to: Ruben Martinez, Vice President of Operations, Stratford Construction, LLC, 795 Sherburne Avenue, Saint Paul, MN 55104.¹ Mr. Martinez had earlier filed Respondent's Notice of Contest, listing the

¹ See, Affidavit of Joy G. Friedman (June 3, 2008); *compare also*, Notice of Contest and Service to Affected Employees, Inspection No. 311530513 (December 28, 2007).

Sherburne Avenue location as Respondent's address.² The Notice of Motion and Motion indicated that under Minn. R. 1400.6600, a responsive filing was due within 10 working days of receipt of the Motion.³

2. No responsive filing was made by, or on behalf of, Stratford Construction, LLC, in the time provided by rule. Likewise, no request has been received by the undersigned from Stratford Construction, LLC seeking an adjustment of the filing deadlines.

3. The Commissioner's Complaint alleges that:

- (a) Respondent is an employer as defined by Minn. Stat. § 182.651, subd. 7 (2006). Respondent at all times hereinafter mentioned had a place of employment at 675 Lafond Avenue, St. Paul, Minnesota, where it engaged in the business of residential home remodeling.
- (b) During the period of November 14 [through November] 29, 2007, Complainant conducted an occupational safety and health inspection of Respondent's place of employment in accordance with Minn. Stat. § 182.659 (2006).
- (c) As a result of this occupational safety and health inspection Complainant found that respondent was in violation of Minn. Stat. § 182.653, subds. 3 and 8 (2006). On December 10, 2007, in accordance with Minn. Stat. § 182.66 (2006), Complainant issued to Respondent by certified mail the Citations and Notifications of Penalty, which are attached as Exhibit A to his Complaint.
- (d) Where contested by Respondent, the proposed penalties were properly issued pursuant to Minn. Stat. § 182.661, subd. 1 (2006). The amount of the proposed penalties are appropriate and reflect the consideration of the size of the business of the respondent, the gravity of the violations alleged, the good faith of the Respondent, and the Respondent's history of previous violations, if any, as required by Minn. Stat. § 182.666, subd. 6 (2006).
- (e) Where contested by the Respondent, the dates for abatement of the violations cited in the citations were properly issued pursuant to Minn. Stat. § 182.661, subd. 1 (2006). The abatement dates are appropriate and reflect consideration of the seriousness of the violation and of what actions were necessary on the part of the Respondent to abate the violations.

² *Id.*

³ Notice of Motion and Motion, at 1; Minn. R. 1400.6600 (2007).

- (f) On December 28, 2007, the Department of Labor and Industry received Respondent's Notice of Contest. Respondent contested Citation Number 1, Items 001 through 008.

4. Respondent did not interpose an Answer to the Commissioner's Complaint within the time provided by Minn. R. 5210.0570, subp. 4.

5. Neither the Department nor its counsel has received any communication from Respondent or a notification that the Notice of Motion and Motion was returned as undeliverable.⁴

6. The allegations contained in the Complaint and Citations and Notifications of Penalty are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 182.66 and 182.661, subd. 3 (2006).

2. Respondent received notice of the charges against it and of the deadline for a responsive filing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of his failure, without the Administrative Law Judge's prior consent, to Answer the Complaint or to make a responsive filing to the Commissioner's Motion.

4. Pursuant to Minn. R. 1400.6000 and 5210.0570, a contested workplace safety Citation may be decided adversely to a party who defaults. Upon default, the allegations set forth in the Complaint, Motion pleadings and Citations and Notifications of Penalty may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the Citations and Notifications of Penalty for Inspection Number 311530513, Respondent violated Minn. Stat. § 182.653 and 29 C.F.R. § 1926.1101.

6. Minn. Stat. § 182.661 authorizes the imposition of sanctions upon employers who violate the provisions of Minn. Stat. § 182.653, or any standard, rule or order adopted pursuant to Chapter 182.

⁴ See, Letter of Jackson Evans (July 1, 2008).

7. The imposition of a regulatory sanction against Respondent is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Citation Number 1, Items 1 through 8, is AFFIRMED.
2. Respondent shall abate any uncorrected conditions referenced in Citation Number 1, Items 1 through 8, within ten days of this Order.
3. Respondent shall forthwith pay to the Commissioner of Labor and Industry a penalty in the amount of \$6,750.00.
4. If the sum of \$6,750.00 is not paid within 60 days after the penalty becomes a final order, it must be increased to 125 percent of the originally assessed amount. After 60 days, unpaid fines shall accrue an additional penalty of 10 percent per month compounded monthly until the fine is paid in full, or until the fine has accrued to 300 percent of the original assessed amount, as required by Minn. Stat. § 182.666, subd. 7.

Dated: July 17, 2008

/s/ Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Not Reported: No transcript Prepared

NOTICE

Pursuant to Minn. Stat. § 182.661, subd. 3, this Order constitutes the final decision in this matter. Under Minn. Stat. §§ 182.661, subd. 3, and 182.664, subd. 5, the employer, employee or their authorized representatives, or any party, may appeal this Order to the Minnesota Occupational Safety and Health Review Board within 30 days following service by mail of this Decision and Order.